



U.S. Citizenship
and Immigration
Services

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FILE:

Office: Phoenix

Date:

OCT 25 2004

IN RE:

Applicant:

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent unauthorized
invasion of personal privacy

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DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Phoenix, Arizona and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director decided that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during this period, as set forth in the regulations at 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel states that the district director misapplied the law through his misinterpretation of the purpose of the comma placement in the law and that the director abused his power in that he failed to state with specificity how the applicant's explanation did not rise to the level of "emergent reasons."

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B)(i) of the LIFE Act reads as follows:

In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

"Continuous unlawful residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that

due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

The record contains a photocopied Form for Determination of Class Membership in CSS v. Meese or LULAC, which was signed and submitted by the applicant for the record. The form for determination reflects that he departed the United States on May 10, 1987 and re-entered the country on August 2, 1987. The purpose given for his trip was because "My mother was sick." The director's determination that the applicant had been absent from the United States for over 45 days was also based on the applicant's testimony at his interview at the Phoenix, Arizona office on February 25, 2003 before an officer of the Immigration and Naturalization Service (now, Citizenship and Immigration Services or CIS).

Subsequently, the applicant submitted a personal statement dated April 17, 2003 in rebuttal to the director's notice of intent to deny dated April 1, 2003. In his rebuttal, the applicant stated that given his mother's serious condition, he remained with her from about May 10, 1987 to about June 30, 1987. The applicant further stated that time period was exactly 51 days. The applicant indicates that when it was felt that his mother was recovered enough to be on her own again, he departed to return to the United States but was delayed until August 2, 1987 because of a lack of documentation and money.

On appeal, the applicant submits affidavits from two brothers and three sisters residing in Guatemala explaining that his mother was very sick and that it was necessary for their brother, her youngest son, to be with her during her illness. Four of his siblings provide reasons why they were unable to provide the care that their mother needed during the recovery period citing reasons such as living far away, providing for other family members, financial reasons, and not being able to leave their jobs. The applicant also submits an updated statement from his mother's doctor and surgeon explaining that during the months of May and June of 1987 it was necessary for the applicant's mother to receive 24-hour attention and care from the applicant during her recovery from pneumonia and cardiac arrest. Based on the evidence provided by the applicant, it is necessary to determine whether the applicant's prolonged absence of 84 continuous days from the United States in 1987 was due to an "emergent reason." Although emergent reason is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

In his sworn statement of April 30, 2003, the applicant indicates that his trip of over 80 days to Guatemala was related to his mother's illness. While this suggests that there was a valid basis for the applicant's departure from the United States, it also indicates the applicant intended to remain outside of the United States for as long as it took to complete the purpose of his trip. Here, the applicant has failed to provide any clear evidence of an intention to return to the United States within 45 days. Accordingly, in the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond the 45-day period. This determination is based in part upon the fact that after caring for his mother for 51 days, the applicant remained abroad for an additional period of 33 days before he entered the United States.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.